

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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BILL DRAFT 2011-RBxz-1 [v.4] (11/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
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Short Title: Revenue Laws Technical Bill.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES  
TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-120.2(f) is repealed.

**SECTION 2.** G.S. 105-129.50 is amended by adding a new subdivision to read:

**"§ 105-129.50. Definitions.**

The definitions in section 41 of the Code apply in this Article. In addition, the following definitions apply in this Article:

(1) Development tier one area. – Defined in G.S. 143B-437.08.

...".

**SECTION 3.** G.S. 105-130.4(t2) is repealed.

**SECTION 4.** G.S. 105-164.4C(h)(5) reads as rewritten:

"(h) Definitions. – The following definitions apply in this section:

...

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid ~~wireline~~-telephone calling service, except the exclusive use requirement.

...".

**SECTION 5.** G.S. 105-164.13(12) and (26a) reads as rewritten:

**"§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(12) Sales of any of the following items:

a. Prosthetic ~~devices~~devices for human use.

b. Mobility enhancing equipment sold on a prescription.



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c. Durable medical equipment sold on prescription.

d. Durable medical supplies sold on prescription.

...

(26a) Food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of ~~Public Instruction~~. Health and Human Services."

**SECTION 6.** G.S. 105-164.13D(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the Energy Star qualified products listed in this section if sold between 12:01 A.M. on the first Friday of November and 11:59 P.M. the following Sunday. The qualified products are:

(1) Clothes washers.

(2) Freezers and refrigerators.

(3) Central air conditioners and room air conditioners.

(4) Air-source heat ~~pumps and geothermal heat~~ pumps.

(5) Ceiling fans.

(6) Dehumidifiers.

(7) Programmable thermostats."

**SECTION 7.** G.S. 105-164.14A(a)(1) and (4) read as rewritten:

**"§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2011~~. January 1, 2013.

...

(4) Motorsports team or sanctioning body. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2011~~. January 1, 2013.

...".

**SECTION 8.(a)** G.S. 105-164.14B(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

...

(12) Owner. – The term includes a lessee under a lease-purchase contract.

(13) Paper-from-pulp manufacturing. – An industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...

(21) Reserved.

(22) Turbine manufacturing. – An industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic,

gas, and wind. The term does not include the manufacturing of aircraft turbines."

**SECTION 8.(b)** G.S. 105-164.14B(b)(1) reads as rewritten:

"(1) Business requirement. – The facility is primarily engaged in one or more of the following:

- a. Air courier services.
- b. Aircraft manufacturing.
- c. Bioprocessing.
- d. Financial services, securities operations, and related systems development.
- e. Motor vehicle manufacturing.
- f. Paper-from-pulp manufacturing.
- g. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines.
- g.h. Semiconductor manufacturing.
- h.i. Solar electricity generating materials manufacturing.
- j. Turbine manufacturing."

**SECTION 9.** G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed ~~at the combined general rate~~ from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed ~~at the combined general rate~~ from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

**SECTION 10.(a)** G.S. 105-228.37 reads as rewritten:

**"§ 105-228.37. Refund of overpayment of tax.**

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must conduct a hearing on a request for ~~refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If~~ refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the board must notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the board. The board must make a decision on the requested refund within 90

~~days after conducting a hearing under this subsection. the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission.~~

~~(c) Review by Commission. Process if Refund Granted. – If the board of commissioners decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer and inform the Department of the refund. The Department may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the Department disagrees with the board's decision. The procedure in G.S. 105-290 for the appeal to the Property Tax Commission of a decision of a board of equalization and review concerning the listing or appraisal of property applies to the appeal of a denial by a board of county commissioners of a request for a refund of tax paid under this Article. If the Commission determines that a refund is due, the board of county commissioners must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of the Commission is binding on the Secretary and on a board of county commissioners.~~

~~(d) Judicial Review. Process if Refund Denied. – A decision of the Property Tax Commission is subject to judicial review in accordance with G.S. 7A-29. If the board of commissioners finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may request a Departmental review of the denial of the refund in accordance with the procedures set out in G.S. 105-241.11.~~

(e) **Recording Correct Deed.** – Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) **Interest.** – An overpayment of tax bears interest at the rate established in G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners."

**SECTION 10.(b)** G.S. 105-228.30(b) reads as rewritten:

"(b) The register of deeds of each county must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county must credit one-half of the proceeds to the county's general fund and remit the remaining one-half of the proceeds, less taxes refunded and the county's allowance for administrative expenses, to the Department of Revenue on a monthly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."

**SECTION 11.(a)** G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(b) **Definitions.** – The following definitions apply in this Article:

...

(4b) ~~NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.~~

..."

**SECTION 11.(b)** G.S. 105-129.81(13) and (18) read as rewritten:

**"§ 105-129.81. Definitions.**

The following definitions apply in this Article:

...

(13) Information technology and services. – An industry in one of the ~~following:~~following, as defined by NAICS:

- a. ~~Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.~~Data processing industry group 518.
- b. Software publishers industry group ~~5112 as defined by NAICS.~~5112.
- c. Computer systems design and related services industry group ~~5415 as defined by NAICS.~~5415.
- d. An internet activity included in industry group 519130.

...

(18) ~~NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.~~Defined in G.S. 105-228.90.

..."

**SECTION 11.(c)** G.S. 105-164.3(23a) reads as rewritten:

"(23a) ~~NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.~~Defined in G.S. 105-228.90."

**SECTION 12.** G.S. 105-236(a)(2) reads as rewritten:

"(a) Penalties. – The following civil penalties and criminal offenses apply:

...

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). In cases in which the ~~taxpayer-taxpayer, after written notification by the Department,~~ fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars (\$1,000).

..."

**SECTION 13.(a)** G.S. 105-256(a)(9) reads as rewritten:

"(a) Publications. – The Secretary shall prepare and publish the following:

...

(9) A final decision of the Secretary in a contested tax case. ~~The Secretary must redact identifying taxpayer information from a final decision prior to publication.~~

**SECTION 13.(b)** G.S. 105-259(b)(27) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:



...

(27) To provide a ~~report-publication~~ required under this Chapter."

**SECTION 13.(c)** G.S. 150B-21.17(a)(5) is repealed.

**SECTION 14.** G.S. 105-467(a) reads as rewritten:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the ~~transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection following:~~

(1) ~~A retailer's net taxable sales and gross receipts that are The sales price of tangible personal property~~ subject to the general rate of sales tax imposed by the State under ~~G.S. 105-164.4(a)(1) and (a)(4b).~~ G.S. 105-164.4.

(2) ~~The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~

(3) ~~The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).~~

(4) ~~The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).~~

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.

(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.

(5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S. 105-164.13(27a).

(6) ~~The sales price of prepaid telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d).~~

(7) ~~The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a).~~"

**SECTION 15.** Section 24.18(g) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.18.(g)** This section is effective for taxable years beginning on or after January 1, 2006, and expires for taxable years beginning on or after ~~January 1, 2011.~~ January 1, 2013."

**SECTION 16.** Section 31.7(e) of S.L. 2010-31 reads as rewritten:

"**SECTION 31.7.(e)** G.S. 105-37.1(a)(1), as amended by subsection (a) of this section, becomes effective ~~August 1, 2010.~~ February 1, 2009, and applies to charges for admission received before that date or on or after that date. G.S. 105-37.1(a)(2), as amended by subsection (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of this section is effective when it becomes law."

**SECTION 17.** Section 8 of S.L. 2006-209 reads as rewritten:

"**SECTION 8.** As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of Legislative Drafting and Codification to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. ~~This section expires July 1, 2011.~~"

**SECTION 18.** This act is effective when it becomes law.